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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,020	01/29/2004	George C. Lewis	1	8000

7590 07/14/2005
George C. Lewis
3838 Animas Way
Superior, CO 80027

EXAMINER

GRAHAM, MARK S

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/769,020

Applicant(s)

LEWIS, GEORGE C.

Examiner

Mark S. Graham

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2,5,10-13 and 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-8 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/13/04</u> | 6) <input type="checkbox"/> Other: _____ |

Applicant's election with traverse of the polyethylene foam embodiment of the target in the 4/18/05 paper is acknowledged. The traversal is on the ground(s) that no serious burden is imposed on the examiner. This is not found persuasive because the additional search necessitated by the particularly claimed method does place sufficient burden and restriction is proper for the reasons explained in the previous office action.

The requirement is still deemed proper and is therefore made FINAL.

Claims 5, 10-13, and 15-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the 4/18/05 paper.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Castronovo, Jr. (Castronovo). Castronovo discloses the claimed structure and may be used for the same purpose. Regarding the “indicator” note that core elements a-d are colored differently. Concerning claim 7, when a core element is not completely within the pillow as shown in Fig. 1 a hole is available for the intended use.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

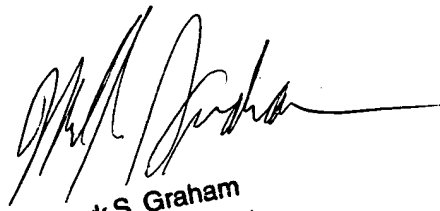
Claims 3, 4, 6, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castronovo. Castronovo discloses the claimed device for the reasons explained above with the exception of the particularly claimed type and hardness of the foam. However, absent a showing of unexpected results, such a hardness would have been obvious to the ordinarily skilled artisan depending on the degree of firmness desired by the user. Regarding the type of foam used, the examiner takes official notice that polyethylene foam is commonly known. Such a foam being well known and suitable for Castronovo's purpose would have been obvious to the ordinarily skilled artisan.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langer in view of Castronovo. Langer discloses the claimed structure and may be used for the same purpose with the exception of the indicator. (Langer's projections 16 may be considered the "marks" and may be used for the desired purpose). Regarding the indicator, as disclosed by Castronovo it is known in the art to use cores of different densities and color code them accordingly. It would have been obvious to one of ordinary skill in the art to have done the same with Langer's pillow for the same reason.

Nichols, Broussard et al., Parham et al., Stewart, Watson, Tanabe, Yuh-Ching, Miyamoto, Redfield, and Hsu have been cited for interest because they disclose similar devices.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
7/5/05



Mark S. Graham
Primary Examiner